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October 26, 2023

Via ECF

Hon. Mary Kay Vyskocil
Southern District of New York
United States District Court

Re: *Pedraza v. Manhattan Monster Inc. et al.*
23-cv-02596 (MKV)

Dear Your Honor:

This constitutes the parties' joint status update letter as ordered by the Court. This letter also serves as a request to extend discovery.

On October 24, 2023 the parties had a mediation. The matter did not settle.

As the Court is aware, a certificate of default was issued against Defendant Luis Gomez (dkt 20). As the other Defendants have not defaulted, it would be premature for Plaintiff to move for a default judgment against Gomez. This is because Courts have previously held that they will not rule on a default judgment motion until the case against the non-defaulting party concludes. *Morales v. Fourth Ave. Bagel Boy*, 2021 U.S. Dist. LEXIS 28899, at * 3 (E.D.N.Y. Feb. 12, 2021) (collecting cases). At the conclusion of this matter with the non-defaulting parties, Plaintiff will move for a default judgment against Gomez.

On October 2, 2023 Defendants provided discovery responses and provided their own discovery demands. Plaintiff will be submitting a discovery deficiency letter to Defendants in the next five business days. Plaintiff expects to provide a response to Defendants' demands within the next five business days.

The parties have agreed that the Rule 30(b)(6) deposition will take place on November 13th and that the Plaintiff's deposition will take place on November 20th.

I have informed Defendants' counsel that on November 10, 2023 I would like to take the deposition of the listed third parties in Defendants' initial disclosures: Dan Tobey and Ricardo Rivera. Mr. Tobey is still employed by Defendants. I have asked Defendants' counsel to make Mr. Tobey available for a deposition. Defendants take the position that I need to obtain permission from the Court to depose him. Defendants also take the position that I need to receive permission from the Court to depose any other third parties. My understanding is that I am within my rights to subpoena a third party without permission from the Court.

Defendants take the position that Dan Tobey and Ricardo are non-party witnesses, both are not parties to this action and therefore leave of court or a subpoena must issue from the court to depose said non-party witnesses.

As Defendants listed both Mr. Tobey and Mr. Rivera as individuals who have information relevant to this action, obviously Plaintiff would like to depose them.

The parties jointly request an extension to complete discovery. The current discovery cut off is November 15, 2023. We are requesting to have until December 31, 2023. This would be the third extension. While the matter was delayed, as the above reflects the parties are working amicably with each other to resolve discovery disputes and schedule depositions.

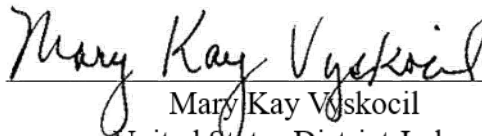
Respectfully,

/s Jacob Aronauer
Jacob Aronauer
Attorney for Plaintiff

Via ECF
All attorneys on record

The requested extension is GRANTED in part and DENIED in part. The requested discovery extension is excessive, particularly in light of the fact that the Court has already granted multiple extensions of the discovery deadline in this action. [See ECF Nos. 33, 38.] Accordingly, the November 15, 2023 discovery deadline is ADJOURNED to December 11, 2023. The December 6, 2023 Status Conference is ADJOURNED to December 12, 2023 at 12:30 PM. The parties are on notice that failure to comply with discovery obligations and/or to follow any Court order, local rule and/or Individual Practice Rule may result in sanctions, including dismissal of this action, preclusion of claims, evidence, or defenses, monetary penalties, and/or other sanctions on counsel. SO ORDERED.

Date: 10/26/2023
New York, New York


Mary Kay Vyskocil
United States District Judge